

Andrew Rockwell  
4426 Via San Rafael  
Las Vegas, NV 89103  
Pro Se

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

HAKKASAN LV, LLC,	)	Case No.: 2:13-cv-01999-JCM-NJK
	)	
HAKKASAN LIMITED	)	
	)	
Plaintiffs,	)	ANSWER
	)	
vs.	)	
	)	
Andrew Rockwell,	)	
	)	
Defendant	)	

COMES NOW Andrew Rockwell in answering the allegations of the Complaints on file herein, affirms, denies and alleges as follows:

Answering Count 1 - Trademark Infringement and Counterfeiting under the Lanham Act, 15 U.S.C. §1114 herein, Defendant denies all allegations.

Answering Count 2 - Unfair Competition under 15 U.S.C. § 1125(a) herein, Defendant denies all allegations.

Answering Count 3 - Cybersquatting under 15 U.S.C. § 1125(d) herein, Defendant denies all allegations

Answering Count 4 - Common Law Trademark Infringement herein, Defendant affirms in part based on his knowledge but denies that loss of revenue was sustained as result of ownership of HakkasanNightclubVegas.com or content contained therein

Answering Count 5 - Deceptive Trade Practices Under N.R.S. 598.0903, et esq. herein, Defendant denies all allegations.

Answering Count 6 - Fraud herein, Defendant denies all allegations.

Answering Count 7 - Intentional Interference with Prospective Economic Advantage herein, Defendant denies all allegations.

Answering Count 8 - Copyright Infringement under 17 U.S.C. § 501 herein,  
Defendant denies all allegations.

Pursuant to Rule 12(b)(5) of the Nevada Rules of Civil Procedure, Defendant Andrew Rockwell (Defendant), hereby moves this Court to dismiss all of the claims for relief asserted against him by Plaintiffs'. In the alternative, Defendant moves for a more definite statement of the claims purported against Defendant. This Motion is based on the following Memorandum of Points, all other papers and pleadings on file with the Court, and any oral argument the Court may permit.

The Defendant now brings forth the following Affirmative Defenses:

## MEMORANDUM OF POINTS

### Defense 1 - Nominative Fair Use

Defendant answering the Complaint herein, alleges that all allegations and counts brought forth therein fails to state a claim for which relief can be granted. Plaintiffs allegation that Defendants' use of the "Hakkasan" mark in commerce is to "deceive consumers" into "purchasing counterfeit services" is categorically false. Should consumers avail themselves of the website/ service they receive authentic VIP services (bottle service) at the actual Hakkasan Nightclub as we do not have the unlimited resources available to build a counterfeit club, or distill our own liquor for bottle service to deceive clients. As such, if one was to buy a pair of brand new Nike shoes from a local store at a discounted price, would the courts side with Nike if they brought litigation against that individual for putting the shoes for sale on eBay using images of Nikes trademarked logo or pictures of the shoes themselves? It's doubtful. The courts have previously asserted that the requirements to resell a product is that it must have been lawfully purchased and authentic. Should consumers

1 click the "Purchase Tickets" buttons attached hereto as **Exhibit 1**, on the  
2 HakkasanNightclubVegas.com website, they are re-directed to our affiliate page with  
3 TicketDriver.com, which the Plaintiff states in Paragraph 21 of the Complaint "...all  
4 tickets purchased directly from Hakkasan including Ticket Driver are authentic"  
5 attached hereto as **Exhibit 2**

6 As such, Plaintiffs still receive full monetary compensation from the purchase of  
7 tickets or from our booking of VIP services with clients, and there is no irreparable  
8 injury, nor monetary loss to Plaintiff.

9  
10 **DEFENSE 2 - Nominative Fair Use**

11 Defendant answering the Complaint herein, alleges that all allegations and  
12 counts brought forth therein fails to state a claim for which relief can be granted.  
13 Defendant asserts that the disclaimer on the front page of the website See **Plaintiffs'**  
14 **Exhibit 5, page #35** states that site is merely a "source" for information about  
15 Hakkasan Nightclub, and as such does not represent any affiliation with Plaintiffs'  
16 venue. Furthermore, because nominative fair use does not implicate the source-  
17 identification function that is the purpose of trademark, it does not constitute  
18 unfair competition.

19  
20 **DEFENSE 3 - Nominative Fair Use**

21 Plaintiffs' allegations state that Defendants use of  
22 "HakkasahNightclubVegas.com" as a domain name infringes upon their famous and or  
23 distinctive mark. Defendant cites a recent district court case from another circuit  
24 which deals with an exact circumstance to these complaints, and ratified by written  
25 agreements. In **TOYOTA MOTOR SALES v. TABARI** the opinion of Judge Kozinski found  
26 Nominative Fair Use of the Tabaris' use of Toyota's federally registered trademark to  
27 apply to their internet domain names Buy-A-Lexus.com and BuyOrLeaseALexus.com. The  
28 court found that "when customers purchase a Lexus through the Tabaris they receive a

1 genuine Lexus car." and that " Toyota is using this trademark lawsuit to make it more  
2 difficult for consumers to use the Tabaris to buy a Lexus." Similarly, as shown  
3 previously (See **Exhibit 1&2**), when customers use the HakkasanNightclubVegas.com  
4 website for tickets or services, they receive authentic tickets and bottle service  
5 within the club. If the court finds that Defendant Rockwell is within his rights to  
6 own the web domain/ website under this definition of Nominative Fair Use, that there  
7 is no bad-faith intent to profit or deceive. As shown above, Plaintiffs' Complaint  
8 fails to state a claim upon which relief can be granted against Defendant, even when  
9 Plaintiffs' allegations are accepted as true. Therefore, this Court should dismiss  
10 this complaint with prejudice.

11  
12 **DEFENSE 4 - Failure to State a Claim**

13 Internationally Hakkasan Limited is known and recognized as a restaurant  
14 company, having only opened their first nightlife venue less than a year ago in Vegas  
15 in April of 2013. The standards of Common Law Trademark tend to lean towards Common  
16 Law status being granted when using a trademark within a geographic location/industry  
17 for an extended period of time.

18 Since prior to April 2013, there was no Hakkasan Nightclub, or restaurant in  
19 Las Vegas, claiming Common Law Trademark infringement is redundant since there was not  
20 ample time to (a) establish duration and extent of use of the mark in connection  
21 with the goods and services with which the mark is used; (b) duration and  
22 extent of advertisement and promotion of the mark in this State; (c) channels  
23 of trade for the goods or services with which the mark is used; and (d) the  
24 degree of recognition of the mark in the trading areas and channels of trade  
25 in this State used by the owner of the mark and the person against whom the  
26 injunction is sought. As shown above, Plaintiffs' Complaint fails to state a claim  
27 upon which relief can be granted against Defendant, even when Plaintiffs' allegations  
28

1 are accepted as true. Therefore, this Court should dismiss this complaint with  
2 prejudice.

3 **DEFENSE 5 - Failure to State a Claim**

4 Defendant denies claim based on banner statement header on  
5 HakkasanNightclubVegas.com (See **Plaintiffs' Exhibit 5, page#33**) which we hold as a  
6 disclaimer of non-affiliation with Hakkasan Nightclub. Furthermore, the nominative fair  
7 use doctrine allows for such truthful use of a mark, even if the speaker fails to  
8 expressly disavow association with the trademark holder, so long as it's unlikely to  
9 cause confusion as to sponsorship or endorsement, which we believe was fully achieved  
10 by the banner disclaimer at the top of the website. Furthermore Speakers are under no  
11 obligation to provide a disclaimer as a condition for engaging in truthful, non-  
12 misleading speech. As shown above, Plaintiffs' Complaint fails to state a claim upon  
13 which relief can be granted against Defendant, even when Plaintiffs' allegations are  
14 accepted as true. Therefore, this Court should dismiss this complaint with prejudice.

15  
16 **DEFENSE 6 - Nominative Fair Use**

17 Defendants' affirm that the images and event information contained within the  
18 website in question are compiled together using information from the Venue Driver  
19 event and ticketing page and various images from news sources and are Nominative Fair  
20 Use as defined in **TOYOTA MOTOR SALES v. TABARI**. Though not directly "authorized" by  
21 the venue, we hold agreements with various hosts, promoter and management of Hakkasan  
22 Nightclub, who we negotiate terms and conditions for services we help to provide.  
23 Furthermore, Defendants' affirm that any monies generated through use of the website  
24 directly benefit Plaintiffs. Defendant further declares that by proxy of affiliation  
25 with Angel Management Group, that they are authorized promoters/marketing for Hakkasan  
26 Nightclub as shown in Defendants' **Exhibit 2** which shows our affiliate code, and  
27 affiliate hyperlink to TicketDriver.com that we have previously established in  
28 Paragraph 1's response. Defendants' are not committing any fraud against the public,

1 or Plaintiff. Defendants further point out that numerous companies in Las Vegas  
2 specialize in providing VIP services for clients within nightclubs and lounges in the  
3 city who are not "authorized agents" yet generate business and revenues for venues  
4 across the city, many of whom market themselves using keywords, string text, and  
5 social media to generate leads for services. Using the search string "Hakkasan VIP"  
6 turned up no less than 8 different companies claiming either guest list, or VIP  
7 services for Hakkasan Nightclub within the first 4 pages of the Google's search  
8 results. Assumedly, not all these websites/ companies/ independent hosts are  
9 authorized resellers of VIP/bottle services at Hakkasan, nor are they are likely  
10 granted license to use trademarked images, marks or copy and yet the Plaintiffs are  
11 not currently pursuing litigation against any of them. See Defendants' **Exhibit 4**. As  
12 shown above, Plaintiffs' Complaint fails to state a claim upon which relief can be  
13 granted against Defendant, even when Plaintiffs' allegations are accepted as true.  
14 Therefore, this Court should dismiss this complaint with prejudice.

15  
16 **DEFENSE 7 - Affirmative Defense**

17 Defendant re-affirms that because of the pass through traffic for purchasing of  
18 tickets and event services as well as the VIP services booked directly into  
19 Plaintiffs' venue, that no interference with economic advantage or monetary loss has  
20 occurred. As show above, the Plaintiffs have failed to state a complaint upon which  
21 relief can be granted against Defendant, even when Plaintiffs allegations are accepted  
22 as true. Therefore, this Court should dismiss Plaintiffs' Complaint with prejudice, or  
23 at least, require Plaintiffs to clarify the basis for their allegations against  
24 Defendant.

25  
26 **DEFENSE 8 - Failure to State a Claim**

27 Defendant recognizes that Plaintiffs have filed for Federal Copyright  
28 protection for photographs, source code (which is not protected due to Plaintiffs'

1 website being built on Wordpress content management system which is using a slightly  
2 modified theme template called Encore that is available for purchase by anyone from  
3 the themes author though the website Themeforest.com) authorized and therefo, text,  
4 and images used on its website, but Defendant was not informed of this potential  
5 infringement in the Cease and Desist letter sent Sept 19th of 2013, nor was a copy of  
6 those copyright infringement claims or applications ever provided. The C&D only stated  
7 that the use of the domain name HAKKASNNIGHTCLUBVEGAS.COM was at issue as the  
8 Plaintiffs felt it infringed on their pending trademark filing. At the filing of this  
9 complaint, the website was in maintenance mode displaying nothing more than a black  
10 page with wording stating that the website was down for maintenance, while the  
11 potentially infringing images were being removed. Infringement is not currently and  
12 has not been occurring since the C&D sent in Sept. Because of the Plaintiffs' filing  
13 of an *Ex Parte Injunction and Restraining Order* with the courts, our registrar has  
14 locked the domain name and blocked our access to further modify or change the website  
15 since October of 2013. As such Defendant sees this claim for relief as baseless since  
16 the alleged infringement was already in the process of being reconciled when Plaintiff  
17 filed the initial injunction with the District Courts as well as when Plaintiff filed  
18 their *First Amended Complaint For Damages and Injunctive Relief*. As show above, the  
19 Plaintiffs have failed to state a complaint upon which relief can be granted against  
20 Defendant, even when Plaintiffs allegations are accepted as true. Therefore, this  
21 Court should dismiss Plaintiffs' Complaint with prejudice, or at least, require  
22 Plaintiffs to clarify the basis for their allegations against Defendant.

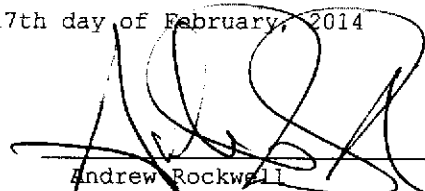
#### 23 24 Conclusion

25 Based on the foregoing, Defendant respectfully requests that this Court  
26 dismiss, with prejudice, Plaintiffs' claims for relief asserted against Defendant,  
27 including the claims for: (1) Trademark Infringement and Counterfeiting; (2) Unfair  
28 Competition; (3) Cybersquatting; (4) Common Law Trademark Infringement; (5) Deceptive

1 Trade Practices; (6) Fraud; (7) Intentional Interference with Prospective Economic  
2 Advantage; and (8) Copyright Infringement. Alternatively, Defendant requests that  
3 Plaintiffs' be compelled to allege specific facts that show Plaintiffs' alleged  
4 entitlement to relief against Defendant. These complaints only have been filed by  
5 Plaintiffs because Defendants refusal to surrender the "infringing" web domain name  
6 and \$16,000 out of court settlement as Plaintiff demanded.

7 WHEREFORE, Defendant prays that the Plaintiff take nothing and the Defendant have  
8 judgment against the Plaintiff and recover the costs of suit herein, and such other  
9 relief the court may deem proper.

10  
11 Dated this 17th day of February, 2014

12  
13   
14 Andrew Rockwell  
15 4426 Via San Rafael  
16 Las Vegas, NV. 89103  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



# Exhibit 1

# MaxButtons: Button List

Brought to you by  **MAX FOUNDRY** makers of MaxGalleria and MaxInbound

Buttons    Go Pro    Support



100

Bulk Actions



Button

Name and Description

Shortcode

Actions

Buy Tickets!

AMG



[maxbutton id="1"]

Edit | G

Copy Move to Trash Delete Permanently

To use this button, place the following shortcode anywhere in your site content: [maxbutton id="1"]

#### Basics

**Name** *Something that you can quickly identify the button with.*

**AMG**

**Description** *Brief explanation about how and where the button is used.*

**URL** *The link when the button is clicked.*

<http://ticketdriver.com/amg/buy/tickets?afc=B8AEX1H1>

**Text** *The actual words that appear on the button*

Buy Tickets!

Open in New Window

Use rel="nofollow"

The top is the normal button, the bottom one is the hover.

**Buy Tickets!**

**Buy Tickets!**

Change this color to see your button on a different background.

# Exhibit 2

venue driver

VIP UNLTD



## Updates



**Summary**



五



## References

## Affiliate links

Your affiliate ticket sale link is: <http://ticketsmaster.com/aff/buytickets?af=BRAXX1H1>

Your affiliate reservation signup link is: <http://www.valuedriver.com/amp/apps/web/reservation?aff=B8AEX1H1>

Your affiliate guest signup link is: <http://www.venuefinder.com/amc/apps/web/guestlist?afc=B8AEX1H1>

## AMG Advocate Marketing Program

**Beta:** Your social media statistics are available at the dashboard

## Your performance

**From: October 29, 2013**

**To: November 12, 2013**

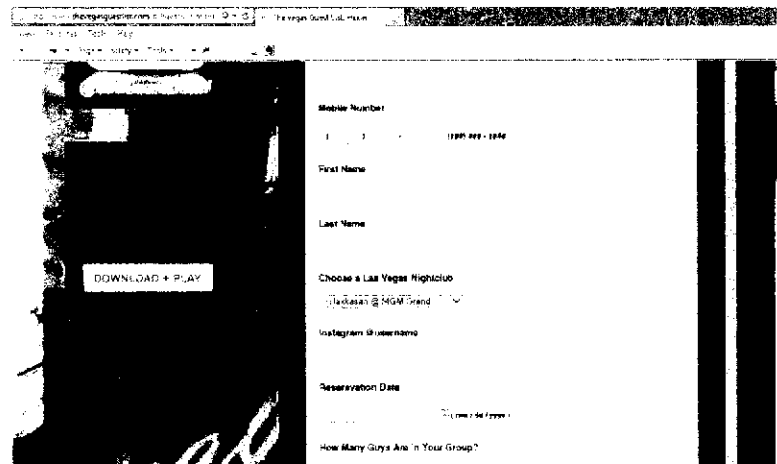
## Update

### Pass Statistics

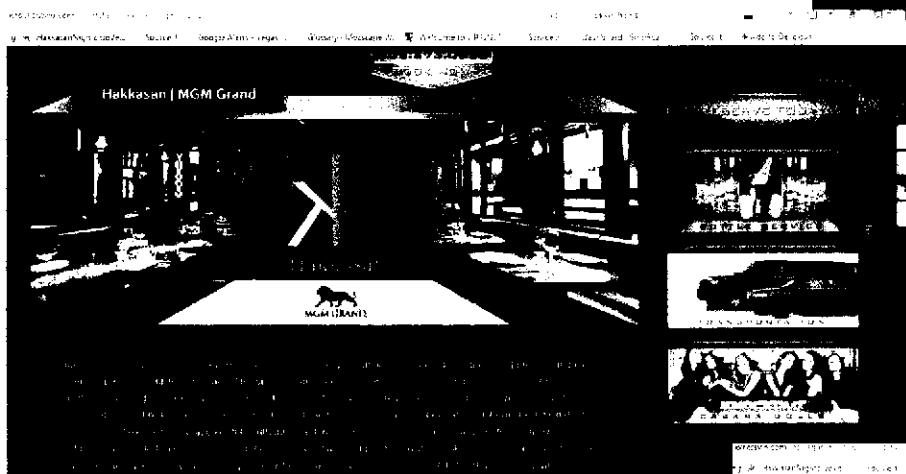
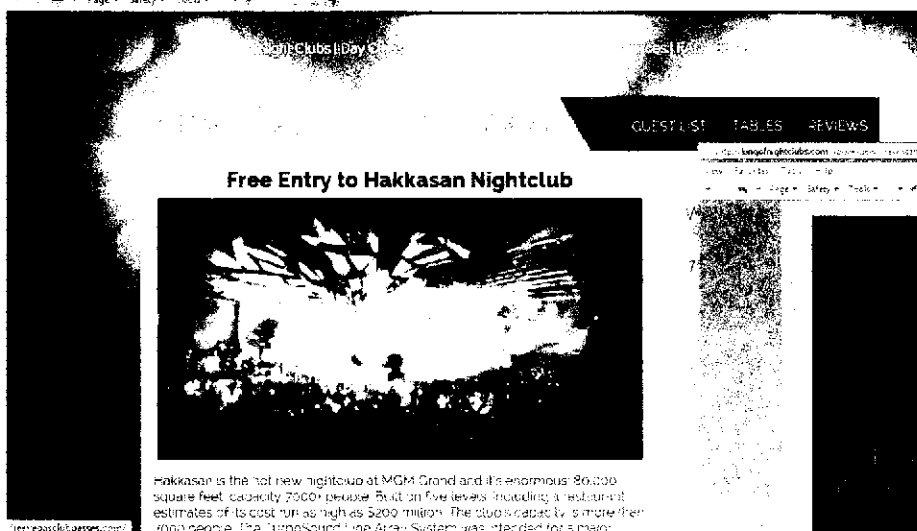
barcode pass: 0 passes: 0 female: 0 male: 0

Mon.	October 26	Tue.	October 27	Wed.	October 28	Thu.	October 29	Fri.	October 30	Sat.	October 31	Sun.	November 1	Mon.	November 2	Tue.	November 3	Wed.	November 4	Thu.	November 5	Fri.	November 6	Sat.	November 7	Sun.	November 8	Mon.	November 9	Tue.	November 10	Wed.	November 11	Thu.	November 12	Fri.	November 13	Sat.	November 14	Sun.	November 15	Mon.	November 16	Tue.	November 17	Wed.	November 18	Thu.	November 19	Fri.	November 20	Sat.	November 21	Sun.	November 22	Mon.	November 23	Tue.	November 24	Wed.	November 25	Thu.	November 26	Fri.	November 27	Sat.	November 28	Sun.	November 29	Mon.	November 30	Tue.	December 1	Wed.	December 2	Thu.	December 3	Fri.	December 4	Sat.	December 5	Sun.	December 6	Mon.	December 7	Tue.	December 8	Wed.	December 9	Thu.	December 10	Fri.	December 11	Sat.	December 12	Sun.	December 13	Mon.	December 14	Tue.	December 15	Wed.	December 16	Thu.	December 17	Fri.	December 18	Sat.	December 19	Sun.	December 20	Mon.	December 21	Tue.	December 22	Wed.	December 23	Thu.	December 24	Fri.	December 25	Sat.	December 26	Sun.	December 27	Mon.	December 28	Tue.	December 29	Wed.	December 30	Thu.	December 31	Fri.	January 1	Sat.	January 2	Sun.	January 3	Mon.	January 4	Tue.	January 5	Wed.	January 6	Thu.	January 7	Fri.	January 8	Sat.	January 9	Sun.	January 10	Mon.	January 11	Tue.	January 12	Wed.	January 13	Thu.	January 14	Fri.	January 15	Sat.	January 16	Sun.	January 17	Mon.	January 18	Tue.	January 19	Wed.	January 20	Thu.	January 21	Fri.	January 22	Sat.	January 23	Sun.	January 24	Mon.	January 25	Tue.	January 26	Wed.	January 27	Thu.	January 28	Fri.	January 29	Sat.	January 30	Sun.	January 31	Mon.	February 1	Tue.	February 2	Wed.	February 3	Thu.	February 4	Fri.	February 5	Sat.	February 6	Sun.	February 7	Mon.	February 8	Tue.	February 9	Wed.	February 10	Thu.	February 11	Fri.	February 12	Sat.	February 13	Sun.	February 14	Mon.	February 15	Tue.	February 16	Wed.	February 17	Thu.	February 18	Fri.	February 19	Sat.	February 20	Sun.	February 21	Mon.	February 22	Tue.	February 23	Wed.	February 24	Thu.	February 25	Fri.	February 26	Sat.	February 27	Sun.	February 28	Mon.	February 29	Tue.	March 1	Wed.	March 2	Thu.	March 3	Fri.	March 4	Sat.	March 5	Sun.	March 6	Mon.	March 7	Tue.	March 8	Wed.	March 9	Thu.	March 10	Fri.	March 11	Sat.	March 12	Sun.	March 13	Mon.	March 14	Tue.	March 15	Wed.	March 16	Thu.	March 17	Fri.	March 18	Sat.	March 19	Sun.	March 20	Mon.	March 21	Tue.	March 22	Wed.	March 23	Thu.	March 24	Fri.	March 25	Sat.	March 26	Sun.	March 27	Mon.	March 28	Tue.	March 29	Wed.	March 30	Thu.	March 31	Fri.	April 1	Sat.	April 2	Sun.	April 3	Mon.	April 4	Tue.	April 5	Wed.	April 6	Thu.	April 7	Fri.	April 8	Sat.	April 9	Sun.	April 10	Mon.	April 11	Tue.	April 12	Wed.	April 13	Thu.	April 14	Fri.	April 15	Sat.	April 16	Sun.	April 17	Mon.	April 18	Tue.	April 19	Wed.	April 20	Thu.	April 21	Fri.	April 22	Sat.	April 23	Sun.	April 24	Mon.	April 25	Tue.	April 26	Wed.	April 27	Thu.	April 28	Fri.	April 29	Sat.	April 30	Sun.	May 1	Mon.	May 2	Tue.	May 3	Wed.	May 4	Thu.	May 5	Fri.	May 6	Sat.	May 7	Sun.	May 8	Mon.	May 9	Tue.	May 10	Wed.	May 11	Thu.	May 12	Fri.	May 13	Sat.	May 14	Sun.	May 15	Mon.	May 16	Tue.	May 17	Wed.	May 18	Thu.	May 19	Fri.	May 20	Sat.	May 21	Sun.	May 22	Mon.	May 23	Tue.	May 24	Wed.	May 25	Thu.	May 26	Fri.	May 27	Sat.	May 28	Sun.	May 29	Mon.	May 30	Tue.	May 31	Wed.	June 1	Thu.	June 2	Fri.	June 3	Sat.	June 4	Sun.	June 5	Mon.	June 6	Tue.	June 7	Wed.	June 8	Thu.	June 9	Fri.	June 10	Sat.	June 11	Sun.	June 12	Mon.	June 13	Tue.	June 14	Wed.	June 15	Thu.	June 16	Fri.	June 17	Sat.	June 18	Sun.	June 19	Mon.	June 20	Tue.	June 21	Wed.	June 22	Thu.	June 23	Fri.	June 24	Sat.	June 25	Sun.	June
------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-----------	------	-----------	------	-----------	------	-----------	------	-----------	------	-----------	------	-----------	------	-----------	------	-----------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	-------------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	----------	------	-------	------	-------	------	-------	------	-------	------	-------	------	-------	------	-------	------	-------	------	-------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	--------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	---------	------	------

# Exhibit 3

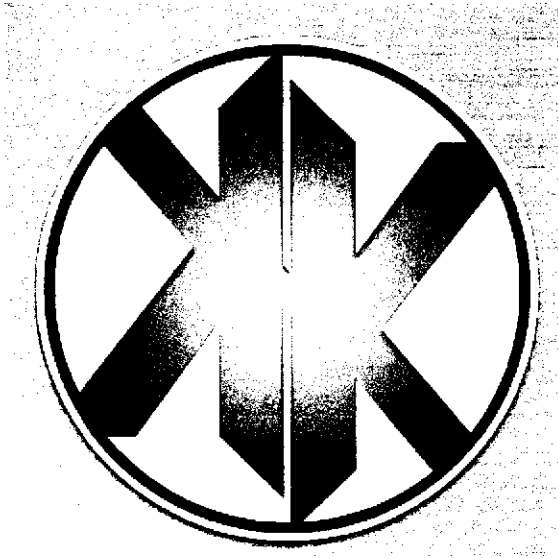


freevegasclubbuses.com/mgm-grand/ Free Entry to Hakkasan Nightclub



# Exhibit 5





Ж

ЖК

ЖК

Ж